

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Part 90 and 88 to Revise
the Private Land Mobile Radio Services
and Modify the Policies Governing Them

PR Docket No. 92-235

and

Examination of Exclusivity and Frequency
Assignments Policies of the Private Land
Mobile Services

To the Commission:

**MOTION FOR STAY OF
INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC.
AND
INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION**

The International Association of Fire Chiefs, Inc. ("IAFC") and the International Municipal Signal Association ("IMSA") (collectively, "IAFC/IMSA"), through their undersigned counsel, hereby respectfully submit this Motion for Stay. This Motion for Stay is filed in conjunction with IMSA/IAFC's Petition for Clarification seeking correction of the Public Safety Pool Frequency Table. IAFC/IMSA request that the Commission stay the licensing of any channels on the 453.025/.075/.125/.175 MHz and 458.025/.075/.125/.175 MHz frequencies for any use other than Emergency Medical Services pending correction of the frequency table. In support thereof, IMSA/IAFC state the following:

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I. STATEMENT OF INTEREST

IAFC is a voluntary professional membership society. Its more than 9,000 members, comprised of senior fire officials, are dedicated to the protection of life and property throughout the United States and abroad. IAFC is the major national professional association representing the interests of senior fire service managers.

IMSA is non-profit organization devoted to the development and use of electrical signalling and communications systems in the furtherance of public safety. The members of IMSA include representatives of federal, state, county, city, township and borough governmental bodies and representatives of governmental bodies from foreign nations. Organized in 1896, IMSA is the oldest organization in the world dedicated to the public safety use of radio technology.

Collectively, IAFC/IMSA are recognized by the Commission as the exclusive frequency coordinating committee for the Emergency Medical Radio Service ("EMRS").

II. THE COMMISSION SHOULD IMMEDIATELY STAY THE LICENSING OF CHANNELS ON THE 453.025/.075/.125/.175 MHz AND 458.025/.075/.125/.175 MHz FREQUENCIES FOR ANY USE OTHER THAN EMRS COMMUNICATIONS

IMSA/IAFC request that the Commission immediately stay any licensing of channels on the subject frequencies unless coordinated by the Emergency Medical Radio Service

coordinator.^{1/} A party must establish four elements in order for the Commission to grant its request for stay: (1) that they are likely to prevail on the merits; (2) that they will suffer irreparable harm if their stay request is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors grant of the stay.^{2/}

A. *IAFC/IMSA Is Likely To Prevail On The Merits.*

In 1993, the Commission created the EMRS to improve the communications capabilities of entities engaged in the provision of life support activities.^{3/} In order to provide the spectrum necessary to create the EMRS, the Commission reassigned Special Emergency Radio Service ("SERS") frequencies in the 453 MHz and 458 MHz band, as well as other frequencies, to the EMRS.^{4/} The Commission limited eligibility for EMRS authorizations to "[p]ersons or entities engaged in the provision of basic or advanced life support services on an ongoing basis that operate radio stations for transmission of communications essential for the delivery or rendition of emergency medical services . . ."^{5/}

^{1/} Such a stay would permit normal inter-service coordination and is consistent with the relief sought herein since that process serves to protect the primary use as designated by the Commission.

^{2/} *See Wisconsin Gas Co. V. FERC*, 758 F.2d 669, 673-74 (D.C. Cir. 1985).

^{3/} *Amendment of Part 90 of the Commission's Rules to Create the Emergency Medical Radio Service*, Report and Order, FCC 93-32, 8 FCC Rcd 1454, released February 12, 1993.

^{4/} *Id.* at ¶ 25.

^{5/} *Id.* at ¶ 13. (47 C.F.R. § 90.20(d)(58)-(63) set forth limited exceptions to the exclusive use of these frequencies for EMRS communications.)

In the *Refarming* proceeding, the Commission created a single public safety pool consisting of Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Emergency Medical and Special Emergency. While the Commission held that “[a]ny governmental entity will be eligible to use any Public Safety Pool frequency,”^{6/} the Commission did not eliminate the specified uses for each respective frequency. Therefore, frequencies that were allocated exclusively for the provision of emergency medical services must still be used in that manner.

As not to compromise the integrity of the EMRS, or any other service, the Commission concluded that “applicants in the new Public Safety Pool should be required to obtain coordination from the current recognized frequency coordinator for the specified frequencies.”^{7/} The Commission's decision was in accord with commenters that stated that “individual public safety coordinators in the existing bands below 470 MHz provide the best method for managing frequency assignments to ensure that the vital needs of each public safety organization are satisfied.”^{8/} There is no indication in the *Refarming* Order that the Commission intended to change the use designation of these channels. Rather, the change in use designation in the frequency table for these channels appears to be an administrative oversight. The Commission's

^{6/} *In the matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments of the Private Land mobile Services*; Second Report and Order, ¶ 23, FCC 97-61, PR Docket No. 92-235, released March 12, 1997 (hereinafter “Second Report”).

^{7/} *Id.* at ¶ 37.

^{8/} *Id.* at ¶ 35.

decision to maintain specified uses for public safety frequencies establishes a very high likelihood that IMSA/IAFC will prevail on the merits of this action.

B. *Irreparable Harmed Will Occur If a Stay Is Not Imposed That Would Prohibit the Licensing Of Channels On The 453.025/.075/.125/.175 MHz and 458.025/.075/.125/.175 MHz Frequencies For Uses Other Than EMRS.*

In order to ensure the safety of the public, controlled use of function — specific channels, achieved through consistent and orderly coordination, is essential. The current Public Safety Pool Frequency Table is incorrect because it does not designate the proper coordinator for the subject frequencies. Entities seeking communications channels may be misled into thinking that these frequencies may be used for *any* purpose. As stated, these frequencies have been allocated for EMRS use exclusively.

The incorrect designation of the frequency coordinator for this service will cause confusion in the licensing of these frequencies and will likely result in ineligible uses of these frequencies. Improper licensing of EMRS frequencies will seriously jeopardize the rendition of emergency medical services to the public. These frequencies were allocated exclusively for EMRS use because the Commission believed that “a discrete radio service category dedicated solely to transmissions related to life support w[ould] help enhance the reliability of [emergency medical service] communications.”^{9/} This objective was not abandoned in the *Refarming* proceeding. To the contrary, the specialized use of these frequencies is to be maintained by the

^{9/} *Amendment of Part 90 of the Commission's Rules to Create the Emergency Medical Radio Service*, Report and Order, ¶ 6.

current coordinator of the EMRS. However, because the Public Safety Pool Frequency Table incorrectly designates the coordinator for the EMRS, these frequencies may be incorrectly licensed for uses other than EMRS.

C. *Other Interested Parties Will Not Be Harmed If This Stay Is Granted.*

If a stay is imposed, emergency medical service providers will still be able to obtain properly coordinated EMRS channels. Moreover, inter-service sharing — where appropriate — still will be available, consistent with procedures available for all special purpose public safety channels. Therefore, the public will not be harmed. In fact, as the Commission has already determined, the public will benefit, because the subject EMRS frequencies will be not be assigned for non-emergency medical uses.

D. *The Public Interest Favors The Grant Of The Stay.*

The Commission chose to retain both dedicated function public safety channels and also the exclusive coordinating responsibilities of the Public Safety Pool coordinators because this the “best method for managing frequency assignments to ensure that the vital needs of each public safety organization are satisfied.”^{10/} The Commission also held that [a]llowing existing certified coordinators to continue their coordination functions will reduce confusion and help ensure that

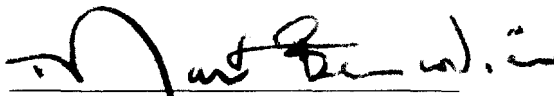
^{10/} *Second Report* at ¶ 35.

the public continues to receive access to vital services."^{11/} This stay request is in the public interest because it will ensure that the subject EMRS frequencies will not be used for purposes other than emergency medical services during the period of time necessary to correct the Public Safety Pool Frequency Table.

WHEREFORE, THE PREMISES CONSIDERED, the International Association of Fire Chiefs, Inc. and the International Municipal Signal Association respectfully urge the Federal Communications Commission to immediately STAY the licensing of any channels on the 453.025/.075/.125/.175 MHz and 458.025/.075/.125/.175 MHz frequencies unless coordinated by the recognized coordinator for the Emergency Medical Radio Service.

Respectfully submitted,

**INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION
AND
INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC.**



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^{11/} Id. at ¶ 33.

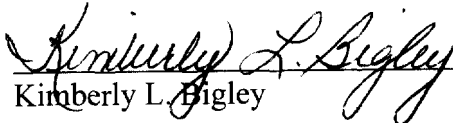
CERTIFICATE OF SERVICE

I, Kimberly L. Bigley, a secretary for the law offices of Keller and Heckman LLP, hereby certify that on January 14, 1998, a copy of the foregoing Motion for Stay was served by first-class mail, postage prepaid, upon:

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